IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 832 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

THAKORE PARBATJI MAFAJI

Versus

STSTE OF GUJARAT

Appearance:

1. Criminal Appeal No. 832 of 2001

MR MEHUL SHARAD SHAH for Petitioner No. 1-4

MR DESAI, ADDL.PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 16/09/2002

ORAL JUDGEMENT

This appeal arises out of a judgement and order rendered by Additional Sessions Judge, Mehsana in Sessions Case No. 26 of 1997 on October 19, 2001, whereby the appellants came to be convicted for offences punishable under Sections 498A, read with Section 114 of IPC and Section 306 read with Sec. 114 of IPC. For offence punishable under Section 306 read with Sec. 114, the appellants were sentenced to undergo simple imprisonment for a period of 5 years and to pay a fine of

Rs. 1,000/-each, in default to undergo simple imprisonment for twenty days. For offence punishable under Section 498A read with Sec. 114 of IPC, appellants were sentenced to undergo simple imprisonment for one year and to pay fine of Rs. 500/- each, in default to undergo simple imprisonment for ten days. The sentences were ordered to run concurrently.

2. The facts of the case in brief are that appellants Nos. 1 and 2 are brothers, appellant No.3 is the mother of appellants Nos. 1 and 2 and appellant No.4 is wife of appellant No.2. Appellant No.1 happens to be younger brother of appellant No.2 and was married to one Suryaben.

3. Appellant No.1 was married to Suryaben about 2-3 years prior to the incident, which occurred on November 3, 1996. It is the case of the prosecution that appellant No.1 did not like his wife Suryaben and doubted her character; disputes were going on between them and the appellants used to ill-treat Suryaben. As per the prosecution case, the parental house of Suryaben is in Mehsana itself. Appellants Nos. 2 and 4 are staying separately from appellant No.1, but in the neighbourhood. On the day of the incident i.e. November 3, 1996, Suryaben was at her parental house and from there she came to her matrimonial house at about 11.30 A.M. At that time, because of approaching Diwali festivals, appellant No.1 and appellant No.3 were cleaning the house. On seeing Suryaben, appellant Nos. 1 and 3 were annoyed and they started abusing her. In the meanwhile, appellants Nos. 2 and 4 also joined them and abused Suryaben. They called her as "whore" and asked her to die so that appellant No.1 can marry again. It is the case of the prosecution that because of this, Suryaben immediately went to her house, locked herself into the house, poured kerosene onto herself and set herself ablaze. She was rescued and taken to hospital. Appellant No.1, while Surya was being taken to hospital, rushed to the parental house of Surya and informed about the incident.

4. On being taken to the civil hospital, Mehsana and Police learning about the incident, statement of Suryaben was recorded by Police Jamadar, where she stated that she had committed suicide because her husband was not ready to keep her. Thereafter, she was examined by the doctor and the doctor has recorded a history that she was ill-treated by her brother-in-law and sister-in-law and father-in-law. Executive Magistrate was also summoned in the meanwhile, who came and recorded the dying

declaration of Suryaben. In the said dying declaration she said that she was ill-treated by her brother-in-law and sister-in-law. She also said that she was abused and ill-treated. Later on when the Investigating Officer arrived, he also recorded her statement and in that statement she has implicated mother-in-law, brother-in-law and sister-in-law.

5. On the basis of the information, an offence was registered and investigated. Suryaben succumbed to the injuries in early morning hours on the next day and ultimately having found sufficient evidence to implicate the appellants, charge-sheet was filed in the Court of Chief Judicial Magistrate, Mehsana. Since the case was triable by the Court of Sessions exclusively, the case was committed to the Court of Sessions and Sessions Case No. 26/97 came to be registered. Charge was framed at Ex.14 for offences punishable under Sections 498A and 306, read with Sec. 114 of IPC. The accused persons pleaded not guilty to the charge and claimed to be tried.

6. Considering the evidence led by the prosecution, learned Additional Sessions Judge came to a conclusion that the prosecution successfully established the charges against the accused persons and therefore, recorded conviction and awarded sentence as stated above. Aggrieved by the said judgement and order, the present appeal is preferred.

7. Learned Advocate Mr. Shah has submitted that all the appellants were on bail during the trial. After the conviction, appellants Nos. 2, 3 and 4 were enlarged on bail, whereas appellant No.1 is in jail. Learned Advocate Mr. Shah submitted that the case of the appellants deserves consideration as the Court below has erred in appreciating the evidence Mr. Shah submitted that there are three written dying declarations and one oral dying declaration reduced into writing by the doctor in form of case history. If all these dying declarations are read together, different pictures emerge from each of them. Mr. Shah submitted that initially before the Police Jamadar the deceased implicated only appellant No.1; then before the doctor she implicated her brother-in-law, sister-in-law and father-in-law, whereas father-in-law had expired much prior to the incident. In the dying declaration before the Executive Magistrate, she implicates only the brother-in-law and sister-in-law and not the mother-in-law or the husband, whereas in the last dying declaration she implicates mother-in-law, brother-in-law, sister-in-law and does not implicate the husband. Mr. Shah submitted that in the dying

declarations before the Jamadar, the Executive Magistrate and the P.I, no endorsement of doctor is obtained about consciousness or fit state of mind of the deceased. Mr. Shah submitted that the deceased had sustained about 95 per cent burns and was in a critical state of health at the time when the dying declaration was recorded by the Executive Magistrate. This aspect emerges from record and there is total absence of any material to indicate that she was in a fit state of mind. Mr. Shah submitted that the necessity of fit state of mind would assume a greater importance in the present case for the reason that the deceased has given different versions in her different dying declarations and therefore whether she was really in fit state of mind and whether she had proper orientation is a matter of doubt. This benefit ought to have been given to the appellants. Mr. Shah placed reliance on certain decisions of the apex Court to support his argument that a medical experts opinion has to be obtained about fit state of mind.

7.1 Mr. Shah submitted further that the evidence indicate absence of mensrea. Words uttered in heat of the moment cannot be considered as instigation or abetment of suicide. In the instant case, the evidence is only regarding the last episode that occurred prior to commission of suicide. There may have been some family disputes and considering the strata of society from which the appellants come, they may have used abusive language. Even as per prosecution case, the deceased was at her parental house and her arrival itself provoked appellant No.1 and appellant No.3 initially and appellants Nos. 2 and 4 later and in that exchange of words certain utterances are attributed to the appellants. There is nothing to indicate that the utterances were seriously meant and aimed at instigating or aiding or abetting he commission of suicide by the deceased. This absence of criminality or mens-rea ought to have been considered by the trial Court and the appellants ought not to have been convicted. Mr. Shah placed reliance on certain decisions of the apex Court in support of this submission of his. Mr. Shah therefore urged that the appeal may be allowed.

8. The appeal is opposed to by learned Additional Public prosecutor Mr. Desai. Mr. Desai has submitted that the trial Court has considered all the relevant factors in light of the evidence and no interference is called for in this appeal. Mr. Desai submitted that the dying declarations are recorded by independent officers who have no axe to grind and the version given them need not be doubted. Mr. Desai submitted that the dying

declarations, though not consistent with each other, are at the same time, not contradictory to each other. Each of the dying declaration implicates different persons, but does not exonerate the persons implicated by the other dying declarations. Mr. Desai therefore urged that this may not be viewed as a weakness of the prosecution case.

8.1 So far as the contention regarding the requirement of medical certificate on dying declaration is concerned, Mr. Desai submitted that it is true that there is no opinion of the doctor obtained while recording dying declarations by the Jamadar or P.I, but so far as dying declaration before the Executive Magistrate is concerned, the Executive Magistrate did consult the doctor and did obtain an endorsement about the consciousness of the patient before recording the dying declaration. The said endorsement is made on the yadi instead of the dying declaration, but that may not be viewed seriously. Fact remains that the patient was conscious when the dying declaration was recorded by the Executive Magistrate. Mr. Desai submitted that the Executive Magistrate has recorded that the patient was able to follow his questions and answered his questions properly. This would indicate that the patient was in fit state of mind to give a dying declaration. Mr. Desai submitted that as observed by the trial Court, appellant No.1 though husband, remained silent when the deceased Suryaben was abused, thereby he has abetted the act of the other accused persons. Mr. Desai therefore urged that the appeal may be dismissed.

9. Having regard to the rival side contentions, at the out-set it may be noted that here is a case with multiple dying declarations, each giving out a different picture and therefore it would have to be examined as to whether the dying declarations can be relied upon or not. It has also to be noted that the evidence of other witnesses is in relation to something that may have occurred in past, but so far as the evidence regarding what transpired just before the commission of the suicide emerges only from the dying declarations and barring these dying declarations, there is no other direct evidence.

10. The first dying declaration came to be recorded by Police Jamadar Laxmanji Ranaji. Laxmanji Ranaji could not be examined by the prosecution as a witness because had had expired prior to the matter coming up for trial. However, the dying declaration is produced at Ex. 29 through deposition of ASI Jeevabhai Motibhai Ex. 28. He

says that while he was PSO in Mehsana Police Station on Nov. 3, 1996, Head Constable Laxmanji Ranaji came from Civil Hospital and produced before him declaration of Suryaben, on the basis of which he registered office and entrusted the investigation to PI. He identifies the signature of Laxmanji Ranaji. During cross-examination he admits that except registering the offence, he has not done anything.

11. In dying declaration Ex. 29 Suryaben has stated that at about 2.00 P.M on that day she committed suicide as her husband was not keeping her. She stated that because a second wife was to be brought, she has committed suicide. What emerges from this is that the suicide was committed because appellant No.1 was not ready to keep the deceased and was to contract second marriage. There is no allegation against any of the other accused persons. There is no allegation of any ill-treatment, harassment or instigation or abetment for commission of suicide even at the hands of appellant No.1. It howsoever requires to be noted that according to this dying declaration she committed suicide at about 1.00 P.M whereas in fact the incident occurred soon after 11.30 A.M when she reached her matrimonial house from her parental house.

11.1 It also is important to note that in this dying declaration there is no endorsement or opinion of the doctor either about consciousness of the patient or about the fit state of mind of the patient. Since Laxmanji is not examined, there is no evidence to indicate whether doctor was consulted before recording of this statement or whether opinion about consciousness or fit state of mind of Suryaben was obtained from the doctor while recording this statement. Thus there is no evidence about physical or mental condition of the deceased when dying declaration Ex.29 was recorded by Police Jamadar.

12. The second dying declaration which came to be recorded by the Executive Magistrate is at Ex. 50. It was recorded by Prajapati Amtaram P.W 10, examined at Ex. 48. In the said dying declaration Suryaben stated that she had burnt herself by kerosene. Reason therefor is stated to be abuses given by sister-in-law Laliben and brother-in-law Abhuji - accused Nos. 4 and 2 respectively. She stated that they called her a whore and asked her to go to her house or to burn herself by pouring kerosene and therefore she has burnt herself by pouring kerosene. She says that there were quarrels in the house. She says that there was a quarrel in the afternoon and therefore, she committed suicide at about

12.00 noon by pouring kerosene She then says that she committed suicide because her brother-in-law and sister-in-law were not ready to keep her. This dying declaration was recorded between 15.45 and 15.55 hours on 3.11.1996. It has to be noted that there is no endorsement of the doctor on this dying declaration of any manner.

12.1 The said dying declaration was exhibited through deposition of the Executive Magistrate Prajapati Ex. 48. He says that while he was on duty as Mamlatdar in his office at Mehsana on 3.11.1996, he received a yadi from Police Department for recording a dying declaration. He produced the said yadi at Ex. 49. He stated that he received the yadi at 15.30 hours and therefore he went to Civil Hospital, Mehsana for recording the dying declaration. After reaching the hospital, he contacted doctor and enquired as to whether patient was conscious. The doctor gave an endorsement on the yadi that the patient is conscious. Thereafter he went to the ward, he does not remember in which ward the patient was, but he states that when he went to the patient to record her dying declaration, she was in a serious condition. He asked the patient about her name, address, cause for the incident, place of incident etc. and the patient gave her name as Suryaben Parbatji; she also gave her address and said that she committed suicide because she was called a whore and was asked to die by pouring kerosene and therefore she had burnt herself by pouring kerosene. This witness says that Suryaben had given name of her brother-in-law Abhuji and sister-in-law Laliben. He says that he recorded the dying declaration in question-answer form. Suryaben was able to speak and follow his questions. He identifies his signature and thumb impression of Suryaben. He says that when he recorded the dying declaration, none else was present. He read over the dying declaration to the patient and thereafter obtained her thumb impression.

12.2 This witness is cross-examined and states that hospital is at a distance of about 1 1/2 to 2 KMs from his house; he does not remember whether Police had accompanied him to the hospital, he had not enquired as to whether anybody had met the patient before he recorded the dying declaration, he does not know to what extent the patient had sustained burns, he denied the suggestion that the patient was not able to speak. He denied the suggestion that the dying declaration was prepared by him as per the information received from relatives of the deceased.

12.3 The yadi received by the Executive Magistrate from Police is at Ex. 49. There is endorsement of the Executive Magistrate in the margin with his initials which indicates that it was received at 15.30 hours on 3.11.96. Just above this endorsement, there is an endorsement by the doctor to the effect that the patient was conscious. The said endorsement is made at 3.40 P.M on 3.11.96.

12.4 Thus, what emerges from this is that the deceased implicates her brother-in-law and sister-in-law only. She does not say anything about her husband whom she had implicated in her earlier dying declaration, nor about her mother-in-law whom she implicated in the subsequent dying declaration. The dying declaration is recorded between 15.45 and 15.55 hours of 3.11.96 and admittedly as per the say of the Executive Magistrate who recorded the dying declaration, the patient was in a serious condition. This version gets support from the medical case papers produced on record at Ex. 52. On the medical case paper, an endorsement is made by Sitaben, mother of the deceased to the effect that she is informed that her daughter's condition is serious and the hospital staff will not be responsible if anything happens to her. The thumb impression is also put. This endorsement is made at 3.42 P.M on 3.11.96. The doctor has made endorsement on yadi Ex. 49 at 3.40 P.M. Thus, when the dying declaration was recorded at 3.45 P.M. the patient was conscious, but was in a serious condition as stated by the Executive Magistrate as well as indicated from contemporaneous material, namely the medical case paper.

13. The last dying declaration which was recorded was by the Police Inspector. That dying declaration is at Ex. 33. Be it noted at the out-set that it is in the form of a statement recorded by the Police Inspector during the course of investigation and does not bear the thumb impression or signature of the deceased, nor does it bear any endorsement of the doctor regarding her physical condition. In this statement she stated that on 3.11.1996 when she went to her matrimonial house from her parental house at about 11.30 hours her husband was removing the house-holds because of approaching Diwali festival. Her mother-in-law was also working and on seeing her, they were annoyed and told her, 'why have you come whore, you have been asked, not to come to this house, still why do you come' and then started quarrelling. In the meanwhile her brother-in-law Abhuji and sister-in-law Laliben also arrived and they also called her a whore and said why does she come to the house frequently. She was told that she has spoiled the

image of the family in the society and told her that she should burn herself so that her husband can contract second marriage. She has said that she was harassed after the marriage and was hurt by these words. She therefore entered the house, locked the door from inside, poured kerosene over her body and burnt herself. She does not know as to who rescued her and brought her to the hospital.

13.1 Thus, from this dying declaration it is clear that she implicates her mother-in-law, brother-in-law and sister-in-law. She states of the presence of her husband at the time of the incident, but does not attribute anything to him. Again here also there is lack of medical opinion about the state of health and mind.

14. The sum total of the above evidence in form of dying declarations can be narrated thus:

14.1 The deceased has implicated different persons in different dying declarations. In the first dying declaration before Police Jamadar, only the husband is implicated. In the dying declaration before the Executive Magistrate, sister-in-law and brother-in-law are implicated. In the dying declaration before PI, brother-in-law, sister-in-law and mother-in-law are implicated. In the medical case papers while stating history recorded by the doctor, brother-in-law, sister-in-law and father-in-law are implicated, whereas undisputedly father-in-law had expired much prior to the incident. The dying declarations are therefore not consistent with each other.

14.2 The dying declaration before Police Jamadar and Police Inspector are recorded without consulting the doctor and without obtaining any opinion from the doctor regarding consciousness and fit state of mind of the patient.

14.3 The dying declaration before PI does not bear signature or thumb impression of the deceased/declarant.

14.4 The dying declaration before Executive Magistrate does not bear any endorsement of the doctor on the consciousness or fit state of mind, but there is evidence of the Executive Magistrate and yadi Ex. 49 to support the evidence of Executive Magistrate that opinion of the doctor was obtained and endorsement was made on the yadi that the patient was conscious at 3.40 P.M., but there is no endorsement about the state of mind of the patient and capacity to give dying declaration.

14.5 With the above factual material on record, it has to be examined as to what could be the effect of such evidence and how it is to be appreciated. In Smt. Laxmi Vs. Omprakash, reported in 2001 AIR SCW 2481, the apex Court observed that it is not the number of dying declaration which will weigh with the Court, a singular dying declaration not suffering from any infirmity and found worthy of being relied on may form the basis of conviction, on the other hand if every individual dying declaration consisting in a plurality is found to be infirm, the Court would not be persuaded to act thereon merely because the dying declarations are more than one and apparently consistent.

14.6 In Panchdeo Singh Vs. State of Bihar, reported in 2002 AIR SCW 88, the apex Court observed that in absence of certificate of a doctor certifying the state of mind of the declarant, opinion of the Judicial Magistrate who has stated from witness box that the declarant was in a fit condition to make statement cannot be accepted. The Court observed that it would be very risky to accept the subjective satisfaction of the Magistrate who opined that the injured was in a fit state of mind at the time of making a declaration.

14.7 In Paparambaka Rosamma and ors. Vs. State of Andhra Pradesh, reported in 1999 CRI. L.J. 4321 the apex Court observed that state of mind of the declarant before making the statement, by the doctor has been stated to be an essential requirement for the prosecution to prove, incidentally mere certificate by even a doctor at the end of the declaration that the patient is conscious while recording the statement was not sufficient. The apex Court in Panchdeo Singh's case, considering this aspect observed that this was so for the reason that dying declaration was the only circumstance for conviction and sentence of the accused.

14.8 This Court in Confirmation Case No. 1 of 2001 has taken a view that in absence of a medical certificate about fit state of mind at the time of recording of dying declaration, mere consciousness of the declarant is not sufficient.

15. In the instant case before this Court, admittedly neither the dying declaration before the Police Jamadar, nor before the Executive Magistrate, nor before the PI there is any medical opinion or certificate to indicate that the patient/declarant was in fit state of mind to give dying declaration.

16. The requirement of fit state of mind of the declarant would assume greater importance in the instant case for the reason that the dying declarations are not consistent with each other. There is implication of different persons in different dying declarations. The case history recorded by the doctor implicates a person non-existent i.e. father-in-law, who had expired prior to the incident. The patient had sustained 95% burns and above all, there is medical evidence to indicate that at the time when the dying declaration by the Executive Magistrate was recorded, the patient was in a critical condition. It is indicated in the medical case papers Ex. 52 that at 3.45 P.M an endorsement was obtained from Sitaben, mother of the deceased that she is informed about the fact that her daughter is in a critical condition and hospital staff will not be responsible for anything that may happen to her. The case papers also indicate that at 16.30 hours on 3.11.96, general condition of the patient was very poor and this aspect was explained to the relatives of the patient. What therefore emerges is that at 3.42 P.M the doctor has informed the relatives that the deceased is in a critical condition. The dying declaration is recorded by the Executive Magistrate between 3.45 P.M and 3.55 P.M. The fact that the doctor certifies on yadi at 3.40 P.M only about consciousness of the patient, the fact that the deceased implicated different persons in different dying declarations, the fact that the deceased sustained 95% burns, the fact that from the beginning her condition was critical which deteriorated from time to time and ultimately she succumbed to the injuries; are the factors that would collectively render the dying declarations unsafe to found conviction of the accused persons appellants by relying on them.

16. Need for a reliable medical evidence about the state of mind would assume greater importance in present case as the deceased has implicated different persons in different dying declarations recorded within short span of time. She even implicates her father-in-law who is non-existent. It would therefore be prudent to look for and expect an independent and expert evidence of a doctor about state of mind of the deceased at the time when dying declarations are claimed to have been made orally or recorded.

17. Now therefore the Court is left with the oral evidence of the witnesses who deposed about ill-treatment to the deceased. The mother of the deceased, Sitaben Ex. 20 stated that deceased Surya was ill-treated and abused

by the accused persons - appellants. She speaks of an oral dying declaration by the deceased that all four appellants had told her that they do not want to keep her, that she is a prostitute and therefore her daughter used kerosene and burnt herself. The witness states that because of the harassment Surya committed suicide. She has been cross-examined. She admits that she has not stated anything before the Police about the dying declaration. She admits that she has not made any complaint about the harassment or ill-treatment to the Police. She states that she has stated in her Police statement that her daughter had told her that she had received news from her in-laws and therefore she would go to her matrimonial house and therefore, she left at about 11 A.M for her matrimonial house. She stated that Surya had gone alone.

18. Witness Kamuben Ex. 21 is the sister of Sitaben, maternal aunt of the deceased. She stays with Sitaben. She stated that about 2-3 months after the marriage of Surya, the dispute had started and deceased was abused. She also states of Suryaben having told her that she committed suicide because her husband, mother-in-law, brother-in-law and sister-in-law had abused her, called her whore and asked her to commit suicide. This witness has also been cross-examined. During cross-examination she stated that when they went to hospital, Surya was alone in the room, she was unconscious. She denied suggestion that Surya was not able to speak but stated that she spoke feebly.

19. Witness Manguben who happens to be neighbour of Sitaben stated that Surya was staying at parental house about 10-12 days prior to the incident and accused Parbatji had come to call her and that is how she went with Parbatji at about 11.00 AM on the day of the incident. At about 2 P.M Parbatji came and informed that Surya had sustained burns, she also states that Surya had orally told that all the accused persons had called her a whore and were not ready to keep her, she was asked to commit suicide and therefore she committed suicide.

20. It has been contended by the Learned Advocate for the appellant that these witnesses are related and interested witnesses. They have given version apparently consistent, but in fact what they have stated cannot be accepted for the reason that even according to Kamuben Ex. 21, when they went to hospital, Surya was unconscious and was hardly able to speak. Coupled with the fact that the medical evidence indicates that from the very beginning Surya was in a critical condition and

doctor has not opined about her fitness to give a dying declaration, these aspects would not inspire much confidence so far as the oral dying declaration part is concerned.

21. So far as ill-treatment part is concerned, it has to be noted that no specific evidence is coming forward on the record, except a general statement that she was ill-treated and harassed. There is no material of any nature to accept the version of the witnesses. The prosecution case on one hand is that the deceased was being ill-treated and therefore she had gone to her parental house. On the day of the incident one version is that she went alone to her matrimonial house on receiving the message from her in-laws. The other version is that her husband had come to call her and they both went together.

21.1 If there were disputes the deceased would not have left her parental house on marriage for her inlaws. If there were disputes, appellant No.1 would not have come to call her and she would not have left with him without any dispute. Excepting the evidence of the mother, matrimonial aunt and a neighbour of the mother of the deceased, there is no other evidence about ill-treatment or harassment meted out to the deceased by the appellants.

22. The evidence if taken and viewed as a whole, what emerges is that the evidence regarding dying declaration is inconsistent, so also the evidence regarding ill-treatment and harassment. The conduct of the deceased as well as the witnesses do not concur with their oral versions. There is total lack of medical evidence about the fit state of mind of the deceased for giving dying declaration, be it oral or written. On the contrary the medical evidence indicates that the possibility of the deceased being not in fit state of mind cannot be ruled out. Doctor on one hand has obtained endorsement from the mother of the deceased that the deceased is in critical condition and the staff will not be responsible for anything that may happen to the deceased and at the same time remarkably opined only about consciousness and not fit state of mind. Absence of evidence as to fit state of mind of the declarant has been accepted to be not sufficient for recording a conviction on the basis of such dying declaration. So far as the oral dying declarations claimed to have been made before mother, maternal-aunt etc. are concerned, it has to be noted that it is claimed to have been made at the hospital around the time when the patient was in

critical condition as per medical evidence. The version given by them as have been stated by the deceased is contrary to what is stated by the deceased in her dying declaration before the two Police officials as well as the Executive Magistrate. In the opinion of this Court, therefore the prosecution version cannot be said to be beyond reasonable doubt and the benefit of doubt therefore ought to have been given to the accused appellants. This Court is therefore inclined to accept the appeal.

23. The appeal is allowed. Conviction and sentence recorded by the Additional Sessions Judge, Mehsana in Sessions Case No. 26/97 is hereby set aside. The appellants are acquitted of the charges levelled against them. Appellant No.1 be set at liberty forthwith, if not required in any other case. Bail bond of the appellants Nos. 2, 3 and 4 shall stand cancelled. Fine if paid, be refunded.

(A.L.Dave, J.)

*/Mohandas